

**§ 426.14 Involuntary acquisition of land.**

(a) *Definitions for purposes of this section.* *Financial institution* means a commercial bank or trust company, a private bank, an agency or branch of a foreign bank in the United States, a thrift institution, an insurance company, a loan or finance company, or the Farm Credit System.

*Involuntarily acquired land* means land that is acquired through an involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract or deed of trust), inheritance, or devise.

(b) *Ineligible excess land that is involuntarily acquired.* Reclamation cannot make available irrigation water to land that was ineligible excess land before the new landowner involuntarily acquired it, unless:

(1) The land becomes nonexcess in the new landowner's ownership; and

(2) The deed to the land contains the 10-year covenant requiring Reclamation sale price approval, and that deed commences when the land becomes eligible to receive irrigation water.

(3) If either of these conditions is not met, the land remains ineligible excess until sold to an eligible buyer at an approved price, and the seller places the 10-year covenant requiring Reclamation price approval, as specified in § 426.12(i), in the deed transferring title to the land to the buyer.

(c) *Land that was held under a recordable contract and is acquired involuntarily.* Reclamation can make available irrigation water to land held under a recordable contract that is involuntarily acquired under the terms of the recordable contract to the extent the land continues to be excess in his or her landholding, if the landowner:

(1) Assumes the recordable contract; and

(2) Executes an assumption agreement provided by Reclamation.

(3) This land will remain eligible to receive irrigation water for the longer of 5 years from the date that the land was involuntarily acquired, or for the remainder of the recordable contract period. The sale of this land shall be under terms and conditions set forth in

the recordable contract and must be satisfactory to and at a price approved by Reclamation.

(d) *Mortgaged land.* Reclamation treats mortgaged land that changed from nonexcess status to excess status after the mortgage was recorded, and which is subsequently acquired by a lender through an involuntary foreclosure or similar process of law, or by a bona fide conveyance in satisfaction of a mortgage, in the following manner:

(1) If the new landowner designates the land as excess in his or her holding, then:

(i) The land is eligible to receive irrigation water for a period of 5 years or until transferred to an eligible landowner, whichever occurs first;

(ii) During the 5-year period Reclamation will charge a rate for irrigation water equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing; and

(iii) The land is eligible for sale at its fair market value without a deed covenant restricting its future sales price; or

(2) If the new landowner is eligible to designate the land as nonexcess and he or she designates the land as nonexcess, the land will be treated in the same manner as any other nonexcess land and will be eligible for sale at its fair market value without a deed covenant restricting its future sales price.

(e) *Nonexcess land that becomes excess when acquired involuntarily.* (1) Reclamation can make irrigation water available for a period of 5 years to a landowner who involuntarily acquires land that becomes excess in the involuntarily acquiring landowner's holding provided the land was nonexcess to the previous owner and:

(i) The acquiring landowner never previously held such land as ineligible excess land or under a recordable contract;

(ii) The acquiring landholder is a financial institution; or

(iii) The acquiring landowner previously held the land as ineligible excess or under a recordable contract and § 426.12(g)(1), (3), or (4) applies.

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(2) The following will be applicable in situations that meet the criteria specified under paragraph (e)(1) of this section:

(i) Reclamation will charge a rate for irrigation water delivered to such land equal to the rate paid by the former owner, except Reclamation will charge the full-cost rate if:

(A) The land becomes subject to full-cost pricing through leasing; or

(B) If the involuntarily acquired land is eligible to receive irrigation water only because § 426.12(g)(3) applies and the deed covenant has not expired;

(ii) The new landowner may not place such land under a recordable contract;

(iii) The new landowner may request that Reclamation remove a deed covenant as provided in § 426.12(i)(4), and may sell such land at any time without price approval and without the deed covenant. However, the deed covenant will not be removed and the terms of the deed covenant will be fully applied if the new landowner is the landowner who sold the land in question from excess status, except for:

(A) Financial institutions; or

(B) Landowners for which § 426.12(g)(1) or (2) apply; and

(iv) Such land will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until sold to an eligible buyer or redesignated as provided for in paragraph (f) of this section.

(f) *Redesignation of excess land to non-excess.* Landholders who designate involuntarily acquired land as excess as provided for in paragraphs (d)(1) and (e)(1) of this section and want to redesignate the land as nonexcess, must utilize the redesignation process specified under § 426.12(b)(2).

(1) However, such redesignations will not be approved if the water rate specified in paragraphs (d)(1)(ii) or (e)(2)(i) of this section is less than what would have been charged for water deliveries to the land in question if the landholder that involuntarily acquired the land had originally designated the land as nonexcess.

(2) Such landholders may utilize the redesignation process, if they remit to Reclamation the difference between the rate paid and the rate that would have been paid, if the land had been

designated as nonexcess when involuntarily acquired, for all irrigation water delivered to the land in question while the land was designated as excess.

(g) *Effect of involuntarily acquiring land subject to the discretionary provisions.* A landowner does not automatically become subject to the discretionary provisions if the landowner acquires irrigation land involuntarily which was formerly subject to the discretionary provisions. However, a landholder that is subject to the prior law provisions will become subject to the discretionary provisions upon involuntarily acquiring land if:

(1) The land is located in a district that is subject to the discretionary provisions;

(2) The landholder in question will be the direct landowner of the land; and

(3) The landholder in question declares the land as nonexcess.

(h) *Land acquired by inheritance or devise.* If a landowner receives irrigation land through inheritance or devise, the 5-year eligibility period for receiving irrigation water on the newly acquired land per paragraphs (c)(3) and (e) of this section begins on the date of the previous landowner's death.

### § 426.15 Commingling.

(a) *Definition for purposes of this section:*

*Commingled water* means irrigation water and nonproject water that use the same facilities.

(b) *Application of Federal reclamation law and these regulations to prior commingling provisions in contracts.* If a district entered into a contract with Reclamation prior to October 1, 1981, and that contract has provisions addressing commingled water situations, those provisions stay in effect for the term of that contract and any renewals of it.

(c) *Establishment of new commingling provision in contracts.* New, amended, or renewed contracts may provide that irrigation water can be commingled with nonproject water as follows:

(1) If the facilities used for the commingling of irrigation water and nonproject water are constructed without funds made available pursuant to Federal reclamation law, the provisions of